

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 03-CR-124

DONALD E. OTTO,

Defendant.

ORDER DENYING MOTION TO MODIFY SENTENCE

Defendant Donald E. Otto entered a plea of guilty to conspiracy to manufacture marijuana in violation of Title 21, §§ 846, 841(a)(1) and 841(b)(1)(B). On March 10, 2004, I imposed a sentence of fifty-seven months, to be followed by four years of supervised release. Otto has now filed a motion to modify his sentence pursuant to Rule 35. For the reasons that follow, the motion is denied.

Under Fed. R. Crim. P. 35, a sentencing court may correct a sentence that resulted from arithmetical, technical or other clear error within seven days after sentencing. Otherwise, the rule authorizes reducing sentences only for substantial assistance provided to the government. To obtain a reduction based on substantial assistance, the government must move for a reduction within one year of sentencing. Here, Otto does not allege that his sentence resulted from any arithmetic, technical or other clear error, and no motion to modify his sentence has been made by the government. The time limits allowed for such motions has also expired. Accordingly, I conclude that under Rule 35 I have no authority to modify the defendant's sentence.

The defendant also cites Rule 60(b)(4), an apparent reference to the Fed. R. Civ. P. 60(b)(4). That rule governs civil proceedings and has no application here. No other authority is cited for the relief Otto seeks. In addition, I note that the reasons set forth in his motion do not warrant the relief in any event. He argues that the court erred in the sentence that was imposed, that his record of behavior since sentencing has been exemplary and that his time could be better spent doing community service or other public works. Any errors committed by the court at sentencing would have been reviewable on direct appeal. Apparently, Otto elected not to appeal. The other grounds stated do not warrant relief and, accordingly, provide no basis for either this or any other motion to reduce his sentence.

Accordingly, the motion is denied.

Dated this 5th day of October, 2005.

s/ William C. Griesbach
William C. Griesbach
United States District Judge